

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

Harry Samuel

Plaintiff,

V.

**THOMAS CARROLL, (WARDEN),
LT. PORTER, COUNSELOR
KRAMER, and the I.B.C.C.
(CLASSIFICATION
COMMITTEE), and DENTAL
SERVICE,**

Defendants

C.A. No. 05-037-SLR

TRIAL BY JURY DEMANDED

**MOTION OF CORRECTIONAL MEDICAL SERVICES, INC. (INCORRECTLY
DESIGNATED AS "DENTAL SERVICE")
FOR A PROTECTIVE ORDER**

Correctional Medical Services, Inc. (hereinafter "CMS"), by its undersigned counsel, hereby moves this Honorable Court to enter the attached Order, granting a Protective Order pursuant to Fed. R. Civ. P. 26 (c) in its favor and against plaintiff and, in support thereof, avers as follows:

1. The case at bar involves an allegation that plaintiff was denied dental care from the beginning of 2005 until July 1, 2005 and then from July 1, 2005 to the beginning of September 2005 and that he injured his wrist, hand and shoulder while being handcuffed during dental treatment on November 7, 2004.

2. On March 22, 2006, CMS filed a Motion to Dismiss Plaintiff's Amended Complaint alleging failure to state a claim upon which relief may be granted since plaintiff's complaints were timely and properly addressed by CMS. In addition, CMS did not become the healthcare provider at Delaware's prisons until July 1, 2005.

3. On or about August 25, 2006, CMS received plaintiff's discovery.

4. A motion for a protective order may be made by a witness from whom discovery is sought. Silkwood v. Kerr-McGee Corp., 563 F.2d 433 (10th Cir. 1977). According to Fed. R. Civ. P. 26 (c), the Court "may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense....". Additionally, a court may grant a protective order prohibiting discovery when it believes the information sought is wholly irrelevant to the issues or to prospective relief. Leighr v. Beverly Enterprises-Kansas Inc., 164 F.R.D. 550, 551 (D. Kan. 1996). Protective orders are entered by the Court for "good cause" which is a determination that consists of balancing the harm to the person seeking the protective order versus the importance of disclosure to the public. Wiggins v. Burge, 173 F.R.D. 226, 229 (N.D. Ill. 1997).

5. Plaintiff's discovery requests and any potential responses thereto by CMS are not relevant to a determination of CMS' Motion to Dismiss, which is directed to the averments in plaintiff's Complaint and whether plaintiff has failed to state a claim upon which relief can be granted.

6. Plaintiff's discovery requests are premature given the pendency of CMS' Motion to Dismiss.

7. Accordingly, CMS requests this Honorable Court to order that CMS is not obligated to respond to plaintiff's discovery until 30 days after a decision on CMS' Motion to Dismiss is rendered.

WHEREFORE, Correctional Medical Services, Inc. respectfully moves this Honorable Court to enter the attached Protective Order in favor of Correctional Medical Services, Inc.

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

BY: /s/ Kevin J. Connors

KEVIN J. CONNORS, ESQ.

DE Bar ID: 2135

1220 North Market Street, 5th Fl.

P.O. Box 8888

Wilmington, DE 19899-8888

Attorney for Defendant,

Correctional Medical Services, Inc.

DATED: September 14, 2006

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CERTIFICATION OF SERVICE

I hereby certify that I have served upon all persons listed below two true and correct copies of **MOTION OF CORRECTIONAL MEDICAL SERVICES, INC. (INCORRECTLY DESIGNATED AS "DENTAL SERVICE") FOR A PROTECTIVE ORDER** in the above-captioned matter this date by electronic service and/or by regular mail.

Ophelia Michelle Waters
Department of Justice
State of Delaware
820 N. French Street, 8th Floor
Carvel Office Building
Wilmington, DE 19801

Harry L. Samuel
SBI # 201360
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

BY: /s/ Kevin J. Connors
 KEVIN J. CONNORS, ESQ.
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 1220 North Market Street, 5th Fl.
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 Wilmington, DE 19899-8888
 Attorney for Defendant,
 Correctional Medical Services, Inc.

DATED: September 14, 2006